

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA §
§
v. § **CRIMINAL NO. 6:07-CR-082-5**
§
TONYA JANAY HOUSTON §

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On August 17, 2010, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant, Tonya Janay Houston. The government was represented by Richard Moore, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Tab Lawhorn.

Defendant originally pleaded guilty to Conspiracy to Possess with Intent to Distribute and Distribution of Methamphetamine, a Class B Felony. The offense carried a statutory maximum imprisonment term of 40 years. The United States Sentencing Guideline range, based on a total offense level of 21 and a criminal history category of I, was 37 to 46 months. On December 15, 2008, District Court Judge Leonard Davis sentenced Defendant to 24 months followed by a term of 3 years of supervised release, subject to the standard conditions of release, plus special conditions to include participation in a program of testing and treatment for drug abuse.¹ On June 2, 2009, Tonya Janay Houston completed her period of imprisonment and began service of the term of supervised release.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from

¹ Defendant received a downward departure for cooperation and she was sentenced to 24 months in prison which was below the adopted guideline range of imprisonment.

possessing a controlled substance, and if, as part of drug testing, a defendant tests positive for illegal controlled substances more than three times over the course of one year, the Court shall revoke the terms of supervised release to serve a term of imprisonment. 18 U.S.C. §§ 3583(g)(1), 3583(g)(4).

In its petition, the government alleges that Defendant violated her condition of supervised release by using and possessing methamphetamine on August 5, 2009 and May 4, 2010, a Grade B violation.² The government further alleges that Defendant was convicted on June 3, 2010, of possessing methamphetamine in Harrison County, Texas. The government represents that Fifth Circuit case law permits a court to find that illicit drug use constitutes possession for the offense.

If the Court finds by a preponderance of the evidence that Defendant committed these violations, a statutory sentence of no more than 3 years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Pursuant to § 7B1.3(a)(1) of the Sentencing Guidelines, violating a condition of supervision by possessing methamphetamine would result in the Court revoking Defendant's term of supervised release in favor of a term of imprisonment. U.S.S.G. § 7B3.1(a)(1). Considering Defendant's criminal history category of I, the Guideline imprisonment range is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by committing the acts as alleged in the government's petition. In exchange, the government agreed to recommend that Defendant serve 8 months in prison with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984 and the agreement of the parties, the Court **RECOMMENDS** that Defendant, Tonya Janay Houston, be committed to the custody of the Bureau

² Such an offense would also be in violation of Texas Health and Safety Code § 481.115.

of Prisons for a term of imprisonment of 8 months with no supervised release to follow.

The parties have waived their right to object to the finding of the Magistrate Judge in this matter so this Report and Recommendation will be presented to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 23rd day of August, 2010.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE